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Opinion No. 91-003

January 10, 1991

William D. Gaddy, Administrator
Arkansas Employment Security Division
P.O. Box 2981
Little Rock, AR 72203-2981

Dear Mr. Gaddy:

This is in response to your request for an opinion regarding the Arkansas Freedom of Information Act (FOIA), which is codified as A.C.A. §25-19-101 et seq. (1987 & Supp. 1989). You have asked, specifically, whether the FOIA inspection and copying provisions apply to certain documents pertaining to an agency employee who has recently received disciplinary suspension. You have also asked for guidance with regard to the disclosure of this employee's payroll and leave records, i.e., annual, sick, or leave without pay.

The legislature has recognized a balance between the public's right to know and the employee's right to privacy by enacting A.C.A. §25-19-105(c), which states in pertinent part:

[A]ll employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

A.C.A. §25-19-105(c)(1) (Supp. 1989).

This office has previously opined that an internal police department investigation of alleged sexual misconduct of certain officers constituted an evaluation or job performance record for purposes of this section of the

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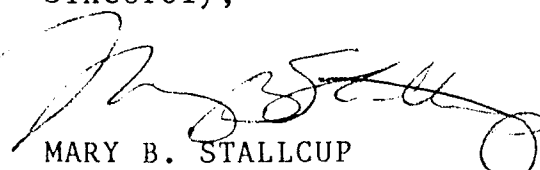
under the FOIA. See Att'y Gen. Op. No. 88-224. As to leave records, it is my opinion that such records are, as a general matter, public records which are open to inspection and copying under the FOIA. It must be noted, however, that any medical records which are part of a request for leave, (this would most likely occur in the context of sick leave), should be removed prior to release of the leave record. Medical records are specifically exempted from disclosure. A.C.A. §25-19-105(b)(2) (Supp. 1989).

Information which would constitute a "clearly unwarranted invasion of personal privacy" must also be removed. A.C.A. §25-19-105(b)(10) (Supp. 1989). Leave records should, in my opinion, be considered personnel records, thus triggering this exception. This determination must be made on a case by case basis. As a general rule, however, to be exempt the information must be of an intimate nature or contain some fact about an individual's private life that would not otherwise be made public except by the individual. See Att'y Gen. Op. Nos. 88-147, 87-108, and 87-115. Please note that I have enclosed a copy of Opinion Number 88-068, which sets forth some of the specific types of information which has been deemed exempt from disclosure through interpretation. Please note that social security numbers should be excised.

We hope that the foregoing offers sufficient guidance in addressing the particular records in question.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Elisabeth A. Walker.

Sincerely,



MARY B. STALLCUP
Attorney General

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